(26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 112 of 2006

APPLICANT Raymond Augustin Deen

Vs.

RESPONDENT The State of Chhattisgarh

Order post for 7-8-2007

Sd/-
Dhirendra Mishra
Judge

(27)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 112 of 2006

APPLICANT Raymond Augustin Deen, son of E.N. Deen, aged about 40 years, resident of Sector-8 State Bank Colony, Qr. No. C-4/3, Bhilai, Tehsil and District Durg (C.G.)

Vs.

RESPONDENT The State of Chhattisgarh, through District Magistrate, District Durg (C.G.)

SB: Hon'ble Shri Justice Dhirendra Mishra, J.

Shri Anurag Jha, Counsel for the applicant.
Shri Pradeep Singh, Panel Lawyer for the State.

O R D E R

This criminal revision is directed against the judgment of conviction and order of sentence dated 17-1-2006 passed in Criminal Appeal No. 233/2005 whereby learned 10th Additional Sessions Judge (FTC), Durg has partly allowed the criminal appeal preferred by the applicant against the judgment passed by the Additional Chief Judicial Magistrate and confirmed the conviction and jail sentence imposed upon the applicant Raymond Augustin under Section 420 of I.P.C. however conviction and sentence imposed upon the applicant under Sections 467, 468 and 471 of I.P.C. have been set aside.

2. The facts necessary for adjudicating this revision are that charge sheet was filed against the appellant along with other co-accused persons Mamta Deen and Pradeep Samuel and they were prosecuted for offence under Sections 420, 467, 468 and 471 of I.P.C. and the learned Additional Chief Judicial Magistrate vide his judgment dated 30-6-2005 passed in Criminal Case No. 1168/2004 convicted the applicant under Sections 420, 467, 468 and 471 of I.P.C. and sentenced him to undergo R.I. for 5 years, to pay a fine of Rs. 25000/- for each count. The appeal preferred by the applicant was partly allowed and his conviction under Section 420 of I.P.C. was maintained by the impugned judgment, however he was acquitted of rest of the charges.

3. The allegation against the accused persons was that they in association with Sandeep Guharai, the absconding accused, obtained money from the complainant Thomas and victims Smt. Vinita, Mohini Deen, Yasmin, Javed Ahmed, Anil Topno, Rosemary, Samuel etc. on the pretext that they shall be provided employment in Australia in Synergy International Company and for this purpose money ranging from 1.50 lakh to 2.50 lakh was obtained and for the above purpose, documents, appointment letters, messages in the name of Synergy International Company were fabricated through computer.

4. Learned counsel for the applicant submits that the prosecution witnesses namely Anil Topno (P.W. 1), Vinita (P.W. 2), Abha Minj (P.W. 3), Rosemary Samuel (P.W. 4), Rajeev Abhisek (P.W. 5) and Elizabeth Samuel (P.W. 6) have not made any allegation against the applicant and they have made allegation only against the absconding accused Sandeep Guharai. This is evident from para 9 to 11 of the impugned judgment. It is further contended that co-accused Manta Deen against whom also, the identical allegations are there has been acquitted by both the Courts below. However, the applicant has been convicted only on the basis of evidence of Thomas Samuel, Javed Ahmed, Mohini Deen. The offence was registered on the wrong report of N.P. Tripathi (P.W. 14) however this witness was not produced for cross-examination by the prosecution and, therefore, his evidence is to be discarded in toto and the F.I.R. has not been proved.

5. On the other hand, learned counsel for the State argued that both the Courts below on the basis of appreciation of evidence given by the victims Javed Ahmed (P.W. 10) and Mohini Deen (P.W. 13) who have made categorical allegations against the applicant that he and Sandeep Guharai obtained Rs. 1 lakh in cash on the promise of employment in the foreign country and executed an agreement for the said purpose and in addition to the above amount, Rs. 25,000/- was also paid towards expenses and thereafter they were taken to Chennai

and ultimately they were not given employment and they had to return from there, has convicted the applicant under Section 420 of I.P.C. and it is concurrent finding of fact and it is based on proper appreciation of evidence and does not call for any interference in criminal revision.

6. I have heard learned counsel for the parties.

7. Javed Ahmed (P.W. 10) has categorically stated in his deposition that he learnt that present applicant Raymond Deen and Sandeep Guharai provided employment in the foreign country. Raymond contacted him and promised to provide employment with the help of Sandeep on a fees of Rs. 1 lakh whereupon he deposited Rs. 1 lakh with the applicant and further paid a sum of Rs. 25,000/- to the applicant. An agreement was also drawn after receipt of Rs. 1 lakh which bears signatures of the applicant. Witness Mohini Deen (P.W. 13) has also stated that she paid a sum of Rs. 1,25,000/- to the applicant, however no receipt was given and a promise was made that receipt would be given later on. She had also gone to Madras in the month of July and August as directed by the applicant and she was in regular touch with the applicant in that period, however no employment was given and she had ultimately returned. The appellate Court on the basis of statement of these two witnesses has held the applicant guilty under Section 420 of I.P.C. and convicted and sentenced him as above. Finding of both the Courts below is based on proper appreciation of evidence available on record and looking to the planned manner in which number of victims were cheated by the applicant with other accused persons, the Court below has convicted under Section 420 of I.P.C. and sentenced him to undergo 5 years' R.I.

8. It is settled law that where the trial Court and the appellate Court on appreciation of evidence available on record reached to the concurrent finding of fact that the charge against the accused was proved beyond reasonable doubt, ordinarily it is not open for the High Court to interfere with the concurrent

finding of the Courts below specially on re-appreciation of evidence in its revisional jurisdiction. In the instant case, the applicant was not able to point out that appreciation of evidence by both the Courts below was perverse and the only ground urged was that the other co-accused Mamta Deen has been acquitted though similar evidence was available against her. Both the Courts below considering the role played by the applicant that he was instrumental in collecting the money in the name of providing employment and subsequently guided the victims to reach Madras and also signed agreement with P.W. 10 Javed Ahmed, has convicted him.

9. In the result, the petition is devoid of substance and the same deserves to be dismissed and it is dismissed.

Sd/-
Dhirendra Mishra
Judge